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Stewart, William M

Representation of southern states

Speech... - February 28 and March 1, 1866.

Washington, 1866



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REPRESENTATION OF SOUTHERN STATES.

SPEECH

OF

HON. WM. M. STEWART, OF NEVADA,

IN THE UNITED STATES SENATE, FEBRUARY 23 AND MARCH 1, 1866.

The Senate having under consideration the following resolution:

Be it resolved by the House of Representatives, (the Senate concurring,) That in order to close agitation upon a question which seems likely to disturb the action of the Government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States which have been declared to be in insurrection, no Senator or Representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such State entitled to such representation.

Mr. STEWART said:

Mr. PRESIDENT: I should not regard the resolution under consideration as a matter of any great consequence if it stood alone, for I do not believe that it would have any binding force upon anybody. But at a time when the country is in agitation over conflicting opinions between Congress and the Executive; when the voice and the hearts of the American people are uplifted for peace; when we must either have peace or destruction; when the very existence, perhaps, of our free institutions depends upon the calm, just, and patriotic disposition of all questions, a resolution coming from the committee of fifteen is a matter of grave consideration, and demands from every one a careful examination. We should investigate this matter and ascertain whether it will have any bearing toward harmony and peace, for if each step that is taken now is in the right direction it may do great harm. We are, as it were, in this great contest like a rivulet. The contest has commenced in Congress; it is now like a stream on the mountain side, which can easily be turned aside with the foot; but if we throw slight obstructions in the way of the current of peace, until accumulated difficulties form a torrent of discord, sweeping us down into an ocean of trouble, it may be past human power to avert the calamities which will threaten our country.

I regard this resolution as a stumbling block, as an obstruction, as something that will retard peace and Union. It is said in its defense that it is simply declaring that Congress has power, that this power is in the Constitution of the United States, that it has been repeatedly declared by acts of Congress and resolutions of this body. If that be true, why throw this new element of discord now into our

already confused deliberations? There are differences of opinion about it; but if those who have brought forward this resolution as a declaration of power are correct in supposing that the power is ingrafted in the fundamental law, the Constitution of the United States, why is this agitating question to occupy the attention of Congress? That Congress has the power to exclude southern members from seats here is best proved by the fact that it has done it for the last twelve months, and still continues to do it, notwithstanding the war has ceased. The world knows that we can do it, because we have done it. The first thing when I came into these Halls was a proposition to admit Tennessee and Louisiana, and I believe the honorable Senator from Illinois was anxious then that they should be admitted. I voted for the postponement of the question, for the reason that I was not then certain that the organizations there existing would be able to sustain themselves and maintain their own existence. I was not sufficiently familiar with the question, and I voted to postpone the consideration of the matter. We did not let them in then. We proved our power to keep them out. They have come here again at this session and asked for admission. They have not yet been admitted, not even within these Halls, although some of the members they have sent were always truly loyal and served in your armies or were distinguished citizens who had been tried in the fiery furnace of secession, where rebellion raged with all its fury, and had come out true to the Union. Even they are excluded from this Hall. Have we not the power? Has not that been sufficiently vindicated? I think the world will answer, yes. Then, if you have the power to keep them out, if you have done it, if you have been exercising that power, why declare that you have it? If there is no good result from a proposition of this kind, there may be evil.

There are with regard to the ultimate result sought to be arrived at by this proposition differences of opinion. I have said before, there are two sets of opinions in regard to the mode of allowing the States to come back. There is a difference of opinion among good men. That difference of opinion threatens the very

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destruction of the country. I have felt that embarrassment ever since I have been here. I came as thoroughly desirous of having this Union restored upon just and equitable principles as any man; and I am now desirous that all the States should be represented by loyal men. I yield to no man in that desire.

I have sustained this Government to the best of my ability throughout this war, and from its very first inception I have done it under all circumstances and on all occasions; and now in this issue I care not for self; I care not for the plaudits of men. If I can aid in contributing to bring about a restoration of these States and save this country from further war and future anarchy; if I can aid in securing what has been accomplished by our glorious warriors in the field; if I can aid in preserving that for posterity; if I can aid in the consummation of the prayers of those who love this country, it is my duty to do that; and the smiles of power or the frowns of enemies or of those who may desire to detract from my motives are nothing to me. I love my country more than party. I love my country more than self-aggrandizement. I love my country more than miserable forms. If we can get the substantial thing, I shall be satisfied. But upon this proposition there is a diversity of opinion. It must lead to a conflict of opinion, and its only operation, if it have any operation at all, is to delay union and peace.

All profess to desire the same result. I hope their professions are sincere. I am bound to take it for granted that both Congress and the President desire to arrive at the same result. They want the Union restored. They want the governments of the southern States in the hands of the loyal men. I well recollect when this controversy commenced. It was before I came here; it was at the time Mr. Lincoln issued his proclamation of reconstruction, which was, I think, in July, 1864. That proclamation was telegraphed to Nevada, where I live, and where we were struggling to maintain the Union cause; and I recollect the opposition that that policy met. I remember the powerful protest of the Senator from Ohio [Mr. WADE] and Mr. Davis, of Maryland, and the discussions upon it. I recollect going upon the stump and saying that these were minor controversies; that what we wanted was the Union; that the Union men would stand together, and go through the war successfully; that these matters were details which we could arrange afterward, which would not deprive us of union. When I came here at the last session there was a controversy on these subjects; but I had no idea that Union men would not be willing to yield their peculiar notions sufficiently to enable us to accomplish the great object.

Mr. Johnson has gone on with the same plan, except that he has restricted it somewhat; he has restricted the number of persons to whom amnesty was extended by Mr. Lincoln. Mr. Johnson has excluded many from the right of voting and the right of holding office who otherwise would have been entitled. He has added

some eight conditions to those which Mr. Lincoln prescribed. Organizations have grown up in the southern States by the non-action of Congress. The war of rebellion was overthrown; the President must do something; he was not a dictator; he simply took the issues of the war, and said to these men, "Frame your governments upon this basis and come to Congress for representation."

Now, while I have not heard any substantial argument against what he did, while I have not heard any substantial argument against the forms of government set up in the southern States, I have constantly heard argument after argument for three long months to show, notwithstanding all this, that Congress had some power which had been overlooked in some way and was not being brought into proper exercise. I have heard argument after argument day after day here to show how we could keep these States out of the Union, but I have waited in vain for arguments to show how we could get them in.

It is said that this resolution is a proclamation of the power and an assertion of the right of Congress to declare when a State is entitled to representation. The President denies that Congress has the power to determine the question whether a State is entitled to representation in the Senate of the United States, for the Constitution expressly provides "that no State without its consent shall be deprived of its equal suffrage in the Senate," and the whole instrument is based upon the right of each State to representation in Congress, and that right as an abstract right cannot be taken from any State because its people have been in insurrection or for any other cause; but the abstract right must remain in each State as long as the Constitution and Union exist. But he does not say that therefore you have no power to keep traitors out of Congress. He says that all the acts of traitors in a State are void, that they cannot take a State out of the Union, but still you are to judge of the qualifications of your own members, you are to investigate the subject, and he says that covers the whole question. He says that you may determine upon the elections, returns, and qualifications of members, and in determining upon their election of course you will determine upon the qualifications of the parties who elected them. If the election is of a member from a congressional district, cannot the other House of Congress investigate the matter to see if the parties who cast the votes and elected the member had the right of suffrage? If the election is of a Senator, cannot we inquire whether the parties who cast the vote for him were acting in obedience to the laws of the United States and qualified to vote in the Legislatures of the States where they did vote? The respective Houses can inquire into the qualifications of the voters who send the parties here, whether they be State Legislatures, or whether they be the constituents generally in a district. There is no doubt about that; and the same result can be

accomplished in that way, in pursuance of the Constitution, that is sought to be accomplished in another mode.

It seems to me that the power to suspend the right of a State to representation may imply a dangerous power and may imply a right to suspend it for any reason that Congress may see fit. That is the danger about it. The power to suspend the right of a State to be represented may hereafter be a terrible precedent. The President wishes to avoid that. Mr. Lincoln during the whole war carefully avoided denying the right of a State to representation. He constantly denied that the Union was dissolved, that the laws admitting the States had been abrogated, that any of their acts while in rebellion were legal so far as to take away the right of a State to representation. He said that the people who rebelled had no right to representation, they were not in harmony with the Government, but they had not overthrown our Government, and that was a very material consideration that was carried all through the first part of the war. It was regarded as a very important point never to be yielded. Mr. Lincoln and his Administration carried it through. Every proclamation issued by him speaks of the insurrection of the inhabitants and not of the States. We have gone on thus far, and if we can get through without announcing that dangerous principle that these acts of secession were really valid, if we can get these States back in any other way, if we can have loyal men to represent them and reconstruct them without acknowledging that the rebellion was a success, it is regarded by Mr. Johnson, and it is regarded by a great number of loyal men, as an important proposition.

There is no provision in the Constitution conferring such a power upon Congress. No authority of the kind is expressed in that instrument, nor can I find any place where it is implied by just implication. In fact it was never anticipated that States would attempt to go out of the Union; and when they attempted to do it, we said that not being anticipated in the Constitution, that they could not do it legally, and any attempt on their part would be absolutely void. We started with that idea. This was simply a continuation of the discussion that commenced while Jeff. Davis was in this Hall. We said that they could not break the laws of Congress, that they must still be enforced. Whether right or wrong, we have continued on that idea. I say it is not necessary or proper to change it and get up a different declaration unless some great good can be accomplished or some great necessity exists for it. If there has been any action of Congress upon the subject, admitting that acts of secession were lawful or valid, I simply say that it was without warrant of the Constitution or laws, and if we have any precedents of that kind they are sufficient without the aid of a resolution which has no binding force upon the Senate.

I have another objection to this resolution, and it is a very important one. The resolution

upon its face contains an untruth. The main recital of this resolution is not true in regard to a fact which has been heretofore regarded as important, whether it be really important or not. I do not regard it as so important as some do. It speaks of the eleven States which have been declared to be in insurrection. I ask when and by whom were eleven States declared in insurrection? The proclamation of the President, issued on the 16th of August, 1861, did not declare the States to be in insurrection; but Abraham Lincoln, acting upon the same theory which the President is to-day carrying out, said, "I do hereby declare that the inhabitants of certain States and parts of States," naming them, "are in a state of insurrection against the United States." Now, whatever you may do here which you admit has no binding force or effect on anybody, I protest against the recital of a fact which shall change the condition of things as they existed at the time of the issuance of that proclamation, or that shall place our late President in a false position in regard thereto, because if there was any point upon which he was careful it was that. I have examined all his proclamations, and he uniformly speaks of the insurrection of the inhabitants of the States. He always claimed that every loyal man in those States had a right to the protection of the laws of Congress, and that if there was but one tenth of them loyal they might form a State government. That I thought was of doubtful propriety, because I did not believe they could maintain it, but he all the while contended for the rights of those who remained loyal. He said that the inhabitants of a State might rebel, but the State never, and that all the laws of Congress, and the solemn compact of the Constitution should ever remain as a shield to every loyal man who might dwell in the South. That was the theory, and it is not a very preposterous one. It is the one on which we fought the war. It is the one that we inserted in our platform; and I protest that that proclamation of the 16th of August, 1861, shall not be made to declare that President Lincoln ever said or intimated that a State was in rebellion, for the language of the proclamation is as I have read. He declared the inhabitants of States and parts of States in insurrection.

Now, if this resolution was made to conform to the truth it would read thus:

That in order to close agitation upon a question which seems likely to disturb the action of the Government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States whose inhabitants have been declared to be in insurrection, no Senator or Representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such State entitled to such representation.

Now, is that a correct principle? Is it correct abstractly? It has no importance except as a declaration of principle. It is not legislation. It will have no legislative effect. There is no other excuse for it except its purity of principle. It is simply a declaration of principle. It is not to accomplish any ulterior end. It is simply brought in here as a grand declar-

tion of some important principle. In passing bills, when there is a desire to reach some legitimate end, I can excuse inaccuracies in the statement of reasons; but if we are going to have a broad declaration of principle, I want it not only to conform to the truth, but to be a principle upon which we can stand.

Then, if this resolution be correct in principle, it means that if a portion of the people of a State go into insurrection that State shall be excluded from representation in Congress just so long as Congress may elect. I do not say that that principle ever will be, and I hope it never may be, applied to any other section or to this section again; but I ask you, are you willing to apply it to other sections? If a part of the people of a State rebel, you say Congress may then exclude loyal Representatives from the Congress so long as they may elect to do so.

Suppose the inhabitants or parts of the inhabitants of a State should be declared by the President to be in insurrection, and there should be a collision between the Congress and the President; suppose the President should happen to declare some section particularly hostile to him or to his party to be in insurrection, the question as to the right of the State to representation would be open and Congress would possess full power to exclude it. It does seem to me that this resolution is not of sufficient importance as an enunciation of principle that we should take up the time of Congress to consider it for a very long period at this important crisis. Why take time now to consider a resolution which its friends admit amounts to nothing, and which certainly cannot be maintained in point of principle? It is fortunate for the chairman of the committee of fifteen who reported this resolution to the House that this new doctrine was not understood, or at all events not applied, at the time of the "whisky insurrection" or the buckshot war in Pennsylvania.

Is it not a dangerous doctrine to admit, first, that a State may lose its right to representation, or, in other words, go out of the Union, and second, whether the State has done so or not is a matter which Congress may determine? Jeff. Davis said that a State could go out of the Union, and that the State was the proper tribunal to determine when that fact was accomplished. That roused the whole loyal heart of the people of the North. They rose against it. They fought it in these Halls. Mr. Lincoln came into power. You undertook to deny it, and it was the intensity and logic of that discussion that was then had which went through this rebellion and saved the country. This resolution says, in fact, that a State may go out of the Union, but that Congress is the sole judge when that fact has been accomplished. That is the difference. I do not care much whether the State judges or Congress judges. The Constitution is fixed; they cannot go out. I deny their power to go out, and I deny the power of Congress to put a State out or to force a State out, and I also deny the power of rebels and traitors to do it. We did deny it, and when

they attempted to do it and submitted it to the arbitrament of war we decided the case on the battle-field that the laws and the Constitution of the United States were supreme and paramount and could not be destroyed. I do not want to take that declaration back. I have gotten into the habit of arguing it in that way. I have been through political campaigns and met copperheads on that issue, and I do not like to be compelled to recall my words and admit that I am wrong, because there are many men who can understand this issue and meet us on it.

It may be said that Congress is a safer tribunal before which to try that question than a single State; but are we certain that the majority of Congress may not some day, if this principle shall be maintained and become a precedent, find it convenient for party purposes, or to gratify sectional prejudices, to make other divisions or exclude from the Union other States besides those referred to in this resolution? The principle is a dangerous one; and if the resolution be adopted it may do more harm than will at first appear; but if we are simply here to declare principles, and not to legislate or take action, I say declare correct principles. It has cost too much blood and treasure to vindicate the integrity of the Union and to establish its indivisibility for us to admit that such a thing could be possible under any circumstances.

But it may be said that denying the right of a State to representation is not denying the fact that the State is in the Union. I ask what is the difference? Would any Senator here say that if every man in the State of South Carolina was as loyal as the Senator from Michigan had been, as true and as faithful to the cause as he has been during this war and after the rebellion was over, although during the war they had been overcome by treason, and elected the honorable Senator from Michigan and sent him here, that he should not be received? If they were every one that way, I ask, would you think of excluding him? I think not. I say, how can a State be in the Union and not be entitled abstractly to representation, that being the object for which the Union was formed?

But we are told by some that the States whose inhabitants have recently been in rebellion are not States at all; but that question can hardly arise under this resolution, for the resolution itself calls them States, and I shall not question the truth of that recital; for the argument of the Senator from Wisconsin, [Mr. Howe,] although an effort of marked ability, failed to convince me that any State has been either killed or committed suicide, and since that Senator's great effort the Supreme Court of the United States have added to the executive branch of the Government their authority to the effect that the Union has not been dissolved. Upon the breaking out of the rebellion that court declined to hear cases from the States whose inhabitants were declared to be in rebellion, but not for the reason that those States had gone out of the Union.

If this discrimination between a State and

its inhabitants is foolish, why does the Supreme Court keep up that distinction? The Supreme Court all the while calls them States, but speaks of the interruption of process by the insurrection of the inhabitants, and assigned that as a reason why it would not hear cases from those States. The Supreme Court said that the inhabitants of certain States have been declared to be in insurrection; we cannot carry out our process there, and will not hear those causes. That is what they said when the rebellion broke out. They did not base their reason, mark you, on the fact that the States had gone into rebellion, but that the inhabitants of the States had gone into rebellion, and they could not issue process. That is the reason why they did not hear cases during the rebellion.

But at the present term the court has set several causes from Louisiana and other southern States, which could only be done upon the supposition that these are States in the Union, for the Supreme Court could only exercise such jurisdiction as is conferred by the Constitution and laws of the United States. The Constitution and the judiciary acts under which the court entertains jurisdiction in these cases apply to States, as the court have repeatedly held.

The jurisdiction that this court exercises over the Territories is altogether distinct, and is derived from that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property belonging to the United States; and the court has frequently decided that before any jurisdiction could be exercised in a Territory, Congress must expressly authorize the exercise of such jurisdiction by law. I am not aware that Congress has passed any law by which a case could be brought either from the Territory of Tennessee or Louisiana, and no law can be found authorizing the court to hear and determine cases to which I have referred unless they originated in States in this Union.

Will you say, if they are States, that all States have not the right of representation as an abstract right? There may be no one worthy to represent them; and, unfortunately for the loyal men of the South in many sections, they did not have loyal men to represent them. It was unfortunate for us that we had not the power to succor them and guaranty to them representation. It was unfortunate for us that we had to turn them over to be slaughtered by the cruel conspirators. But I deny that they lost their citizenship. I deny that the State of Tennessee was ever out of the Union. I deny that the President of the United States is or ever has been an alien. I deny that Maynard is an alien. I deny that Brownlow is an alien. I deny that any loyal man who stood firm in the darkest night of the rebellion is an alien. I will not vote for any motion, rule, resolution, or other proceeding that can imply such a thing by the most casuistical argument; and I say that this resolution is capable, I think, on a fair construction, but it is capable at all events of

the construction that the Union of the States has been dissolved. There is no use in throwing these irritating questions into the already too much excited state of the public mind.

But it is said, to what does this argument lead? Have we not the power to prevent traitors and rebels from taking seats in this Senate? Jeff. Davis said we had no power to make war upon them unless we admitted they were a foreign power. They said we had no right to make war unless we admitted they were out of the Union, that we could not make war upon a State. We replied to Jeff. Davis, we do not propose to make war upon a State, but we will make war upon traitors. That is the way we met the argument. That is the way the Union soldiers met the argument. Now, you say that if we admit that a State is in the Union, and that it has the rights of a State, we cannot keep traitors out of Congress. I deny it. It does not follow. The Senate has no right to allow traitors to come into this Hall, because they are not qualified. We have a right to expel them after they come here. We are bound to do it. If a man is elected by a disloyal organization, in violation of good faith to the Government, you have a right to inquire into that as a part of his election. You have done it and can do it without any congressional action. I intend to see that disloyal persons are excluded, so far as my vote goes, but I do not intend to admit that the logic of Jeff. Davis was correct.

The power of the Senate to protect itself is too well understood for anybody to doubt it. It can just as well protect itself as it can with the other House to help it. Suppose that a person should come here claiming to be a Senator, and the question should arise whether the Legislature that elected him was loyal. Suppose that some of the members of that Legislature had been convicted of treason and were not entitled to seats in that legislative body, but were mere usurpers in it, and his credentials were here, would we not investigate the fact to see whether he obtained the requisite number of legal votes to elect him, and would we call upon the House to help us in the decision of that question?

You say that otherwise it may happen that a State may be represented in the House and not in the Senate, or *vice versa*. May it not happen that certain districts of a State are entitled to representation, and the whole State not be entitled to representation? Suppose that a district is truly loyal, as has been the case in several instances; suppose that every man, woman, and child within that district is willing to stand by the flag, and a member is elected by and goes to the other House from that district, have the laws of that State been so abrogated, is the State out of the Union so that that House cannot investigate the fact whether his loyal constituents shall be there represented?

It may be that the majority of a State may be loyal, and may organize a loyal State gov-

ernment, and there may be districts in that State that cannot be represented, or districts that will not send proper men. I deny that when you admit the right of a State to representation you are bound to admit all the delegation from that State at once. You are to investigate the cases of the persons who come here, and see whether they come up to your standard. Each House can do that better separately than they can jointly, for a joint rule may not work well. Do you pretend to say that if there is a district in the South that has always been loyal during this war, Jeff. Davis had the power to deprive those people of the right of representation? If so, why? Because he has abrogated the laws of Congress; and for no other reason. Davis never did have control of East Tennessee. He was simply a raider there. Those people stood out from the beginning to the end. They fought treason where it was darkest and thickest. Do you say that, notwithstanding he could not quench their insatiable thirst of liberty and loyalty, notwithstanding he could not make them false to the Union by burning their houses over their defenseless heads, and by robbing them of their property, he could render them incapable of enjoying the privileges to which they are entitled under the Constitution?

If these people in the case I have supposed have lost their right of representation, it is not from their *status*; because in that section the *status* was just as good as anybody's, but from the fact that there was some validity in the ordinance of secession; and if we admit that validity, and say that we are forced to readmit the State or pass any resolution that may be so construed, the precedent will surely injure the perpetuity of our Government. It is admitting a rotten plank. It is admitting that a part of the people of a State may deprive the remainder of the rights which they have under the Constitution. That is something that the last Administration and the Union party in the late struggle were tenacious about.

This resolution says that they shall not be admitted until Congress shall declare those States entitled to representation. If that is so how is Congress to declare it? I ask in all seriousness, how shall they declare it? Suppose they do it by a law, that law must assume, as this resolution does, that these eleven States are not States in the Union and entitled to representation, no matter how loyal the State governments or the Senators or Representatives who apply for admission may be; but the President—and here is his crime—has expressed a different opinion. He holds that loyal men representing State governments in these rebellious States that are in conformity to the laws of the United States may be admitted to Congress. If you say, how do we know that their constitutions are in accordance with it, how do we know that they have such constitutions, I say examine them, just as you do in every case. Suppose the State of California should change her constitution, as she has once

done, and elect a Senator and send him here, would you have to readmit the State?

I hold that no State has gone or can go out of the Union, and consequently so far as being in the Union is concerned they at all times remain the same. The loyal men in those States have a right to the Constitution and laws of the United States; the disloyal have not the right of representation; the loyal have, and if there is a sufficient number of loyal men to govern the State, they have the right to form a State government.

In the darkest time of the rebellion I deny that the right to represent Tennessee in this Hall by those who were loyal ever was for a moment suspended, but their power to obey the law, their power to represent it was prevented by treason. They were overpowered, and they were denied their right of representation, not by Congress, not by the Government. This war was to maintain for them that right which rebellion had sought to take away from them, and had for a time suspended the harmonious relations of the State to the General Government; and it will be too much to admit that this Government has ever been in such a fix that the people thereof were really not entitled to the protection of the Constitution, and because they were denied it this war was brought on, this war was prosecuted. A man may have a right to a farm, and a trespasser may keep him out of it, but if he sues on his right, he recovers not a new farm, not a new title, but he recovers the title he had before. We said that the loyal men in the South had a right to the Union, to the laws, to representation, that rebels had no right to take these from them; they had no right to usurp the authority of this Government, and we called upon the loyal masses to rally to our aid. We tried the suit before the god of battles, and, thank God, we won it, and we restored to those loyal men their right of representation, which existed all the time, but which traitors attempted and did for a time prevent them from enjoying.

In discussing these questions, it is embarrassing for any one to do so without taking into consideration all the circumstances by which we are surrounded and the other propositions of this committee, and I propose to take up the other propositions, so as to see from time to time how this bears upon the general question.

There is another proposition of the committee of fifteen, which, if passed, will obviate the necessity of passing this, and obviate the necessity of any further constitutional amendment, and I think obviate the necessity of any more State Legislatures or conventions. To that I propose to call the attention of the Senator, and it may be if we pass that, it is everything that it is necessary to do. I believe it accomplishes the whole work. All other legislation to fix guarantees is very unimportant if the article recently reported is passed, and I call the special attention of the Senate to this proposition to amend the Constitution of the United States. The resolution has not been at all discussed here,

and my only object in calling attention to it is to show that it is a part of the work of this same committee, and to estimate if possible how long legislation will have to be delayed if this resolution passes. The merits of one depends so much upon the other that it is impossible, it seems to me, to consider one fairly, and particularly the one under consideration, without an examination of the others, in order to see whether it is necessary to wait for their final adoption or whether they are ever likely to be adopted. The propositions are three in number; the one which immediately preceded the resolution under consideration proposes the following as an amendment to the Constitution:

ARTICLE —. The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States; and to all persons in the several States equal protection in the rights of life, liberty, and property.

This resolution has not been discussed. My only object in calling attention to it in this connection is that this part of the plan of reconstruction for which time is asked may not be overlooked. If I understand it correctly, it would work an entire change in our form of government. The first clause is not very material perhaps. It provides that Congress may pass laws to carry into effect a part of the Constitution of the United States as it now stands, which might be all well enough if the United States courts had not already complete jurisdiction to make part provisions of the Constitution effectual; for a citizen of each State will enjoy all the privileges and immunities of citizens of the several States, unless some State should pass a law abridging that right, which law would be unconstitutional, and the courts would be bound so to declare.

I repeat, the present provision of the Constitution will have all the effect of securing to the citizens of each State all the rights and immunities of the citizens in the several States, unless some State passes a law which denies that right. Then the United States courts have jurisdiction. Missouri once undertook that experiment in the memorable contest of 1819-20. An act was passed to allow Missouri to form a State government with slavery, provided certain territory should be reserved to freedom. She organized a constitution, and came here for admission with a clause that negroes and mulattoes should not enter the State, or rather she said that the first session of the Legislature should pass such a law. Congress decided that this was in violation of the constitutional provision that the citizens of each State should enjoy all the rights and immunities of citizens of the several States, and Mr. Clay, after the subject was discussed for weeks and weeks, offered a proviso which was adopted, and sent the State back. The proviso said that she might come into the Union if her Legislature would consent never to exercise that power: and it was sent back because it was in conflict with the Constitution of the United States.

I believe Illinois and some of the western

States did practically carry this out for awhile, refusing to allow free negroes to go among them; but it was not for the want of a law but for the want of somebody to enforce it. The courts were open to anybody to enforce it. We had law enough. Why empower Congress to pass a law when you have the protection of the Constitution? But that is not the material part of this resolution; I wish to call the attention of the chairman to it, for I am in earnest about my construction and believe that I am correct. The last clause taken in connection with the first part of the sentence, omitting the intervening words, reads as follows:

The Congress shall have power to make all laws which shall be necessary and proper to secure to all persons in the several States, equal protection in the rights of life, liberty, and property.

That is to say, Congress shall have power by law to make all the laws in all the States affecting the protection of either life, liberty, or property, precisely similar; for the protection of life, liberty, and property, must be equally secured to all persons in all the States. And how shall this be effected, unless the laws are equal? And how shall they be made equal except by Congress? The laws of the several States in this Union are very dissimilar in many respects, and some may afford greater protection to life, liberty, and property than others; but Congress must examine and modify all these laws, so that they shall afford the same protection in all the States that they do in any. The only way this could be accomplished, would be for Congress to legislate fully upon all subjects affecting life, liberty, and property, and in this way secure uniformity and equal protection to all persons in the several States. When this was done, there would not be much left for the State Legislatures, for I apprehend that the great body of the laws of the several States as in fact of any government relate to the protection of life, liberty, and property.

Undoubtedly this had reference to some other subject. It undoubtedly had reference to protecting the negro or something of that kind, but it does not say that they shall have the same rights and privileges in the several States as in any State, but it says throughout the United States. The laws affecting life, liberty, and property shall equally secure these ends. Congress must pass all laws affecting life, liberty, and property, and I would like to know what is left to the States after you pass all these laws; and it must be done so as to secure these ends equally to all persons. We shall have no necessity for State Legislatures when that is done. But I hardly think when this is examined that anybody will favor it. We have got along so far so well that I hardly think we are willing to say that the laws of the States shall not continue to afford protection to all persons within their limits. I think the committee had in view one object, but by their amendment would accomplish another.

Is all action going to be postponed until this amendment is adopted by the States? I do not

think it will ever be adopted, and if adopted there will be great difficulty in making laws equal in Massachusetts and in South Carolina so as to protect life, liberty, and property in the same way in both. It seems to me that the grammatical, legal, and necessary construction of this proposed amendment can hardly have been intended by its framers.

Mr. S. gave way for a motion to adjourn.

THURSDAY, *March 1, 1866.*

The Senate resumed the consideration of the resolution relating to representation of southern States.

Mr. STEWART continued:

Mr. PRESIDENT: Before the meeting of Congress, various propositions were suggested in the public prints for amendments to the Constitution as guarantees for the future security of the country. It was feared that there would be an effort on the part of the late rebellious States to embarrass the Government by attempts to assume, in some form, obligations incurred in support of the rebellion. I was one among the number who had some fears on this subject, and although most of the southern States had expressly repudiated the rebel debt, still I felt that it would not be unreasonable to place that repudiation beyond recall, by a national compact, and it seemed to me that no one could complain of such compact by way of amendment to the Constitution, inasmuch as the justice of the proposition was manifest to all, and denied by none, the only objection being that it was a work already accomplished, and no danger was to be apprehended from that source. I still think that an amendment of this kind, properly worded, would be readily adopted by all the States, both North and South, and might prevent harm to the country. At all events, it would be a guarantee of some value to loyal men, and need not retard for a single day the work of reconstruction, for with the present state of feeling the South would be quite as ready to adopt it as the North. It is but a declaration of a conceded proposition perfectly in harmony with the spirit of the Constitution and the verdict of the war.

But this is not a proposition under consideration. There was another question growing out of the abolition of slavery which changed the basis of representation in the South from the entire population, less two fifths of the slaves, to the whole population without any reduction whatever. The public mind was much exercised over this question, and the general verdict of the people, as manifested through the press, was that the basis of representation should be so changed as not to accord to the South increased representation as a reward for rebellion, and it was generally conceded that that could be accomplished by adopting male citizens of the United States over the age of twenty-one years, who are allowed to vote in their respective States, as the basis of representation, and the assessed value of property, both real and personal, as the basis of taxation. Both of these propositions are embodied in the

resolution which I shall offer as a substitute for that reported by the committee:

Representatives shall be apportioned among the several States which may be included within this Union according to the number of male citizens of the United States in each State over twenty-one years of age qualified by the laws thereof to choose members of the most numerous branch of its Legislature. And direct taxes shall be levied in each State according to the value of real and personal property situated therein not belonging to the State nor to the United States.

These propositions appeared for a time to meet with universal favor, for they appeared to be founded in justice and equality. It based the political power of the country upon the number of voters, giving each an equal voice; giving a voter in California the same representation here as one in Mississippi; making an elector in Ohio equal to one in Kentucky. It said to the South, "If your negroes, women, and children do not vote they shall not be counted; not because they are negroes, women, and children, but because they are not voters." It said to the North, "If you do not allow your aliens and women and children to vote they shall not be counted; not because they are aliens, women, and children, but because they are not voters." It left the control of the elective franchise where the Constitution of the fathers had placed it, within the jurisdiction of the several States, only limiting their representation in Congress to such male citizens over the age of twenty-one years in the several States as the States themselves would trust with the ballot. This, it was thought, would be a sufficient inducement to all the States to extend the right of suffrage to all who could safely exercise that right. It would not only secure to the negro a fair prospect of being enfranchised when his advancement in civilization shall have entitled him to that high prerogative, but would also allow that privilege to be conferred upon him gradually, as it has been done in some of the States of New England, where he now enjoys many of the privileges as well as all the rights of citizenship, and so fast as he is enfranchised in any State he is counted in the basis of its representation. This is the most favorable position for the negro to occupy, for it avoids the necessary conflict that must arise in forcing the emancipated slave, all unprepared for the conflict, upon a political equality with his late master—a position which the Senator from Maine himself has told us no one will contend is desirable.

This resolution accomplishes another object quite as important in my estimation as the question of representation itself, and that is, it holds out an inducement to the South to allow the northern emigrant to vote, and makes the proposition recently brought forward in the Virginia Legislature to require five years' residence before a Union soldier from the North can vote in the Old Dominion quite as detrimental to Virginia herself as to the American citizen to whom she denies the elective franchise. Here let me say that the idea suggested in the proposition to require five years' residence to qualify an American citizen to vote in Virginia, is

the most unfriendly and disloyal manifestation since the fall of the rebellion, and its malice is only surpassed by its folly. Would not the fact that voters only are counted in the basis of representation, operating with other things, induce the South to abandon such madness?

It is said by the Senator from Maine that we are accustomed to the idea that representation should be based upon population, that it is a part of the genius of our institutions; but let me ask that Senator, if such be the case, why make an exception as in his proposition; why make any change in the Constitution whatever? Have we not become accustomed to the whole Constitution as it is, and if such an argument be sound, does it not prove too much? But what was the real reason why the proposition to make voters the basis of representation was abandoned? It was a gentleman from New England, I believe, who suggested that it would not operate fairly upon the old States from which the young men who have built up the West have emigrated, leaving a surplus of females, and a comparison was instituted between Vermont and California, and upon this partial view, without any examination into the general effect of the amendment, the whole plan was abandoned and a system of indirection adopted which I shall hereafter discuss more at length. Were the fears of New England well grounded? Is it a fact that her non-voting population bears a greater proportion to the whole population than that of the great States of the northwest? An examination of the census of 1860 shows the reverse to be true. For while the East has a greater proportion of females, the West has a greater proportion of minors, and strange as it may seem, that while the white males over twenty years of age in the States of Ohio, Michigan, Indiana, Iowa, Illinois, and Wisconsin constitute only one third of the whole population, or eleven in thirty-three, in the New England States the ratio of white males over twenty to the balance of the population is as eleven to twenty-nine—I do not pretend that my figures are exactly correct, as I was compelled to omit fractions, but are sufficiently so for the purposes of this argument. Tested by another rule, taking Mr. COCKLING's table, prepared with great care, we find that representation based on white suffrage would give an increase of nine Representatives in the States east of the Alleghany mountains, namely, one to Connecticut, two to Massachusetts, one to Maine, one to New Jersey, and four to New York, while the States west of the Alleghanies would gain only five. This, however, might be somewhat modified on account of the foreign males over twenty which we have no means by the census of separating from the aggregate of white males over that age. But the changes occasioned by this element would certainly not be prejudicial to the East, the preponderance of foreigners being in the West, and the population of California, which has been held up as an example of the extreme injustice and inequality of this proposition, is nearly fifty per

cent. foreign. When actual voters are made the basis and not white males over twenty, by which we now only approximate the result, Vermont will not cry out against the unjust representation of California.

Suppose California should be largely represented for a few years until population should regulate itself; suppose she should have one or two Representatives more than Vermont, with one hundred and seventy-five thousand voters to eighty-seven thousand in Vermont; with a territory greater than all New England and the middle States combined; with \$50,000,000 a year exports, while Vermont has only \$850,000; with \$216,000,000 worth of property, while Vermont has only \$179,000,000; with \$1,200,000 worth of manufactures and productions, while those of Vermont are valued at only \$437,000; and finally, paying into the national Treasury on account of internal revenue nearly four million dollars, while Vermont pays less than eight hundred thousand, and with the third part of entry in the United States. If, sir, I repeat, she should have one, or two more Representatives than Vermont, would a great wrong be committed? I take Vermont and California, for between these the comparison is usually instituted. Take the proposition of the committee, and California has two Representatives and Vermont three, for California will never allow her Chinese population to vote, and they must be excluded from the basis of representation. You say they are not citizens. Why have they not become so? Because they know very well that they will not be allowed to vote in any event; and consequently California is not much troubled with their applications for citizenship. But let it be known that California cannot afford to exclude them from the right of suffrage, and the question will be at once forced upon her to decide whether she will allow Chinese to vote or lose her just representation in the Halls of Congress. The same question will be presented to Nevada and the other Pacific States in the next five years, and the Chinaman will become the negro of the Pacific. But it may be said by some, let him vote. I can only say to them, you do not know the Chinaman. They will reply that this is the argument of the South, that Senators from the North do not know the negro. But is there no force in the argument even as to the negro, who is an American, generally a believer in the Christian religion? And with how much more force can this argument be used with regard to the pagan Asiatic, speaking an unknown tongue, and being a stranger, and ever remaining an alien and a stranger, to our language and our institutions. The following is the proposition of the committee:

ARTICLE —. Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed: *Provided*, That whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation.

What are the arguments in favor of this strange proposition? The only one that I have yet heard is, that it will force the South to universal suffrage or deprive her of an acknowledged right; for the proposition asserts that population is the just basis of representation, but that the late slave States shall be excluded from that basis until they will extend suffrage to the blacks. But it may be said that this provision applies equally to the blacks of the North with those of the South. This is a mere subterfuge, for every one knows, so far as the practical question is concerned, that there are no negroes in the North, or not a sufficient number, to make any material difference whether they are included or excluded. The non-voting population of the North consists of aliens, women, and minors. The non-voting population of the South consists of negroes, women, and minors. The North will exclude on account of alienage, sex, and age, and avoid the operation of the proviso; while the South and the Pacific coast must either confer universal suffrage on negroes and Chinamen, or lose their just representation. This will ever be a source of discontent, and it will be hard to explain to fair-minded men why an alien, and even an alien enemy, should be represented in the North and a free negro unrepresented in the South. But it is said that the South can avoid this inequality and injustice by enfranchising all the negroes—for mark, they must all be enfranchised or none are counted—a measure which the chairman of the committee who reported this resolution tells us is not desirable or proper.

But how will this proposition be received by the people of the nineteen original free States which deny suffrage to the few comparatively intelligent negroes within their jurisdiction? When you tell them that you propose to punish the South for not extending universal suffrage to her emancipated slaves, can they with any propriety inflict this punishment by a constitutional amendment when they are guilty of the same offense with far less provocation? What will fifteen original slave States, who are to be punished by this proposition, say when you tell them that you deprive them of their just representation because they refuse to do what every fair man must admit they cannot and ought not to do, to enfranchise the late slaves without the slightest preparation for the exercise of that important privilege?

If I were compelled to choose between the proposition of the committee and the resolution offered by the Senator from Missouri to confer universal suffrage at once, I should accept the latter, because it is bold and affirmative, and has every reason in its favor that can be offered in support of the resolution of the committee without the conclusive argument of indirection to disgrace it in the eyes of bold, honest men. Show me where or when the American people ever indorsed an indirect or equivocal proposition. The politician may waver and shrink from responsibility, but the people are

honest and fearless, and whenever they are prepared to amend the Constitution, they will amend it in plain and direct terms for plain and direct reasons, and if it be true that no amendment to avoid this evil which is supposed to exist can be adopted in plain terms with the consent of the American people, it is some evidence that no great necessity exists, and is quite conclusive evidence that no amendment can be carried, for Congress cannot cheat the American people. I do believe that if we had not become wise above our day and generation, but had adopted the plain and simple proposition of voters as a basis of representation, that we could have been successful. But the proposition under consideration is heartily approved by none, and must fail sooner or later. It is illogical on its face, and contains within itself its own best refutation and condemnation. "Better endure the ills we have," than to fall into this labyrinth of confusion worse confounded.

Suppose you pass this resolution, and it should become a part of the Constitution, what may be the consequences? You have departed from the original compromises of the Constitution; you have deprived the South of just representation for not doing a thing which you confess she ought not to do; you have established the precedent that whole sections may be punished by constitutional amendments; you have commenced a crusade upon the compromises of the Constitution, abandoning principle, and confessing that your justification rests upon expediency alone. Where shall this crusade end? May not the time come when the giant States of the Mississippi valley, now free from the Gulf to the Lakes, soon to teem with a hundred million inhabitants, shall inquire by what warrant of authority New England holds twelve places in this Senate Chamber? Will New England then reply, by equality of right, or, by the compromises of the Constitution? If by the former, may not these mighty States demand a count, and if by the latter, may not this proposition be brought up in judgment against her as having repudiated those compromises? May not Kentucky some day say to Rhode Island, was it just for you, in the day of your power, to deprive me of representation, for revenge? May not Virginia one day complain of Connecticut, and may she not, by the coöperation of New York, Pennsylvania, Ohio, and other great States, have the power to make that complaint effectual? Beware how you kick a sleeping lion. The South is now free; the shackles of bondage have fallen from the slave, and idleness must depart from the homes of the whites.

Why should not the richest half of the national domain some day become the most populous and powerful? I know to-day the South looks broken and destroyed, prostrate, miserable, weak, and poor, but this war has done far more for the South than it has for the North. It has broken up an institution that was destroying the white man and impoverishing the country, and has opened the fertile fields of that vast region for free labor; and if this resolution

passes, the sons of New England and the young men now residing in the North will be heard joining their voices with the natives of the South proclaiming against the injustice which we have done to their adopted country. We can punish men, we can besiege and overrun a country, but an attempt to punish rich land, which is to be inhabited by New England Yankees like ourselves, is a doubtful exercise of power.

But this proposition comes from the committee on reconstruction, and for that reason, and that reason alone, we are to presume that it has something to do with that subject. How or in what way it will harmonize existing difficulties or give any additional security to the North, I am unable to comprehend. Its manifest injustice will inspire nothing but heart-burnings and discontent, and excite new enmities not only against the Government but against the negro, who will be regarded as the cause of a great calamity and a grievance to be removed from the land, and some mode will be devised whereby to evade the law by placing the distinction on some other ground besides race or color.

Is the question of representation so important after all as has been supposed? It is said that the two fifths of the slaves who were not counted will give the original fifteen slave States eighteen more Representatives. But this calculation is based upon the hypothesis that the loss and mortality in the North have been equal in proportion to that in the South, and that there has been no greater proportional increase in the North than in the South during the past five years. The fact is, there can be no new apportionment of Representatives until the new census is taken; and does any one doubt that the loss of the South in actual deaths and emigration, added to the failure of increase, will more than equal the two fifths of the slaves that will be added to the basis of representation by their emancipation? Beside all this, the progress of the North has not been materially retarded by the war. By the census of 1860 the fifteen slave States, rejecting the two fifths of the slave population, had eighty-five Representatives in Congress, and the nineteen free States one hundred and fifty-six. It is safe to say that a census to-day, based upon the Constitution as it now is, would not increase the representation of the original slave States, but it is certain it would decrease it.

But there is another fact which is very important in this connection. We have gained over to freedom some of those original slave States. Missouri to-day, with nine Representatives, is quite as radical as Massachusetts; and Maryland is only one step behind Missouri, so that we may take fourteen from the eighty-five and add it to the one hundred and fifty-six; and we hope to be able before long to add to this list Union men from Tennessee, and other southern States; and we intend to exclude from both Halls of Congress all but loyal men. Can we not in this way, with our present majority, keep the rebels from taking charge of this Government, for the present session of Con-

gress, and for the next, and until we either depart from principle or disobey the will of our constituents and are hurled from power?

There is no danger of rebels obtaining the ascendancy unless we ourselves take positions which cannot be sustained before the country. But although I do not regard the danger of no amendment equal to the danger of adopting the illogical proposition of the committee, still I think my substitute, making voters the basis, better than no amendment, and if the idea had not been abandoned without investigation it would have passed both Houses and gone to the country long before this. It is the only true principle, if a change is to be made, upon which representation can be based. We must either take population or votes. If we take population, no amendment is necessary. A coercive proviso in favor of the negro will be a coercive proviso against the proposition. But what objection is there to the principle of adopting voters as the basis of representation? It is the voters, after all, who are the ultimate source of all political power. They decide all political questions by their votes. Their voice is assumed to be the voice of the people, and why should one elector have a greater voice than another, on account of his surroundings? Why should the young men of the East, who are surrounded by mothers and sisters anxious for their emigration to the undeveloped West have a greater voice in the councils of the nation than their more enterprising brothers, surrounded by the most prodigal and bounteous gifts of nature, and burning with a laudable desire for such representation and legislation as shall lead to the development of the homes of their adoption? Do not the mighty resources of the West require more representation, more care, more ability in the opening of new channels of trade and new avenues of wealth than is required in following the grooves of legislation in which the eastern States have so harmoniously moved from the organization of the Government until now?

But the objections on the ground of there being a greater non-voting population in the East than the West have been shown to be without foundation, and the principle that a voter in the North is equal to a voter in the South, I am willing to advocate anywhere as an independent, abstract proposition—independent of negro or any other suffrage; but I am not willing to maintain a proposition which assumes that population is the only just basis, and denies its universal application to coerce negro suffrage, or to accomplish any other object.

I must be permitted to digress for a moment to examine the position of the Senator from Massachusetts; for it so happens that we agree in our opposition to this resolution. He opposes it because he contends that the Constitution has already conferred power to extend suffrage to the negro, and for other reasons. I oppose it because I believe it is unjust, and for other reasons. But I do not wish to be understood as agreeing with him in his principal reason of

opposition; for if there is anything clear to my mind, it is that the question of suffrage is exclusively within State jurisdiction under the Constitution as it now stands. It is contended that the provision in the Constitution that the United States shall guaranty to every State in this Union a republican form of government denies to the State the power to exclude the negro from the elective franchise. A strange construction, indeed! When this Constitution was made, a majority of the States were not only excluding the negro from voting, but absolutely treating him as a chattel, and continued so to do during all the brightest days of the Republic. I fancy that it would have taken something more than the eloquence of the Senator from Massachusetts to have convinced the Convention which framed the Constitution of the United States that a majority of its members, and a majority of the States there represented for the purpose of forming a more perfect Union, were not republican in form, but that it was reserved for a son of Massachusetts to ascertain that the framers of the Constitution intended and made it the duty of the United States to guaranty to Virginia and the other slave States a different form of government from that which existed, until a wicked conspiracy sought to destroy the Union of the States and the free government of the fathers.

But the honorable Senator inquires, wherein does the Constitution guaranty to the States the right to regulate the elective franchise? A new doctrine! Where, I ask, in that instrument have the States conferred that power upon the United States? The power existed in the States before the formation of the Constitution; and the Constitution provides that—

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

But in this case we have something more than the mere fact that the power to regulate the question of suffrage was not conferred by the States upon the United States, and was therefore reserved; for we have the express recognition and acknowledgment of the right of the States to determine the qualification of electors or voters in the second section of the first article of the Constitution, wherein it is provided that the electors in each State shall have the qualifications requisite for electors (or voters) of the most numerous branch of the State Legislature. These plain provisions of the Constitution have been sanctioned by uniform practice for over three quarters of a century, and vindicated, sustained, and expounded by every patriot and statesman of the present and former generations until now, and clearly and strongly maintained by the great constitutional expounder, and the predecessor of the Senator from Massachusetts through a long life of service and usefulness, but never in more marked or unmistakable language than in his reply to Hayne:

“To avoid all possibility of being misunderstood, allow me to repeat again in the fullest manner, that

I claim no powers for the Government by forced or unfair construction. I admit that it is a Government of strictly limited powers; of enumerated, specified, and particularized powers, and that whatsoever is not granted is withheld.”

But in this case so far from the power to regulate suffrage being granted to the General Government, language is used fully recognizing the existence of that power in the States, and I fear the honorable Senator from Massachusetts will be compelled to reason a little more closely or fail to acquire the reputation of his great predecessor as the expounder of the Constitution of the United States.

But to return to the question of reconstruction. What has this resolution or any other proposition emanating from the committee to do with that subject? Suppose Congress should adopt each of these resolutions, will we be any nearer the consummation of the great work before us than we were on the day when Congress assembled? The committee has not informed us what guarantees are to be demanded of the South before it will be safe and proper to allow the late rebel States representation in Congress. If conditions are necessary ought they not to be named at once, that Congress may approve them and the people of the South adopt them? Congress has been in session now nearly three months, and volumes of able and elaborate arguments have been made to show how the South can be kept out of the Union, and that Congress has power to exclude the southern States from a participation in the legislation of the country, but a proposition or plan for bringing them back has not appeared. The plan suggested by the President has been severely criticised but no other has been suggested. The country is perfectly willing that Congress shall present a different plan from that of the President, and if a better one can be presented all Union men everywhere, and, I have no doubt, the President himself, would be quite willing to accept it, for it is certain that the people want Union, and will have it at any cost. The history of the last five years is conclusive upon this point, and if no better plan than that suggested by the President can be devised, and that speedily, they want it on the plan of Andrew Johnson, and will sustain him and his plan against all arguments tending to show how disunion may be accomplished.

I for one wanted some other guarantees besides those contained in any document I have yet seen emanating from the President. I wanted the repudiation of the confederate debt placed beyond a peradventure; I wanted the basis of representation established upon the voters of the country; but I would not sacrifice the Union for even these, for I do not believe that this country will ever become so degraded and lost to honor and patriotism as to send Senators and Representatives to Congress who will ever under any circumstances pay one dollar contracted by rebels for the overthrow of the Government, but a constitutional amendment would avoid the agitation of such a question, and the other question of representation I have already

shown is not so great an evil as a partial examination of the question might indicate.

But it is intimated that the President would open the doors of Congress to rebels and traitors. I deny that there is the slightest foundation for such a charge. On the contrary, while he has on all occasions disclaimed any authority or control over the action of either branch of Congress as to the admission of members, he has expressed a decided opinion that disloyal persons should be excluded from these Halls. In his veto message he says:

"The right of a State to representation would in no wise interfere with the discretion of Congress with regard to the qualifications of members; but I hold it my duty to recommend to you, in the interest of peace and in the interests of the Union, the admission of every State to its share of public legislation, when, however insubordinate, insurgent, or rebellious its people may have been, it presents itself not only in an attitude of loyalty and harmony, but in the persons of Representatives whose loyalty cannot be questioned under any constitutional or legal test."

Again, to the delegation of Virginia, he says:

"He who comes as a representative, having the qualifications prescribed by the Constitution to fit him to take a seat in either of the deliberative bodies which constitute the national Legislature, must necessarily, according to the intent of the Constitution, be loyal and, willing to abide by and be devoted to the Union and the Constitution of the States. He cannot be for the Constitution, he cannot be for the Union, he cannot acknowledge obedience to all the laws, unless he is loyal."

I challenge any man to show me that the President has ever advised the admission of rebels or traitors into Congress. And why should he? Has he any cause to love treason or traitors? Did they not first assail him with vituperation and abuse when he stood alone in these Halls and renounced party ties and party associations and separated himself from all his personal and political friends, and, braving the prejudices and arrogant insolence of the slave power, dared to stand with the hated "abolition party," which was regarded by his section as degradation and infamy, and with it defend the Union, defy traitors, and make war upon treason? Why should he, when, after he left these Halls, he found that traitors had laid waste his beloved State, that ruin and desolation had overtaken his loyal constituents, and himself branded a criminal and outlaw for daring to defend the right? I like that portion of President Johnson's plan which excludes disloyal persons from the Halls of Congress, and shall ever insist upon the faithful observance of that condition, but I do believe that we should discriminate, and that speedily, between the loyal and the disloyal; that we should commence at once to strengthen the hands of those in the South who have been true to the Government during the terrible civil war that has passed. They were situated where it cost something to be Union men. We thought with over one third of our population from the South, and they comprising the boldest political leaders of all the Pacific coast, perfectly familiar with all the machinery of party politics, and supported by large and constantly arriving reinforcements from Price's army, all eager to contest for political supremacy upon the chosen

battle-field of Nevada, that it was some credit to be a Union man; but if our position was uncomfortable, what shall we say of a Union man in the South where the penalty of even a suspicion of loyalty was death; where every Union soul was tortured by the concentrated heat of the fires of rebellion; where there was no ray of hope and no bow of promise, and where to be for the Union was to renounce home, family, and country, and to be exiled and outlawed?

Men of the North who obtained office and honors, personal security and wealth by loyalty should pause before they question the patriotism of Andrew Johnson and the loyalists of Tennessee, who were true to the flag of the Union when you had no power to succor them, when they were surrounded by the legions of rebellion, driven from their homes, their houses burned over their defenseless families, and those who were most dear to them either thrown into dungeons or murdered before their eyes. The struggles of this people surpass any other example of history, and all honor is due to their patriotism. They never did succumb to rebellion. They kept the Union fires burning in Tennessee in the darkest night of treason, and established and maintained their own civil government with small aid from the United States while the war was still raging. The people of the United States recognized the virtues and heroism of the Unionists of Tennessee by elevating from their number Andrew Johnson to the second place in the Government of the United States.

But the Congress of the United States have closed the doors of both Houses to a loyal delegation from Tennessee, chosen by those same Unionists. Why is this done? The country asks why? And if Congress would justify themselves before the country, they must speedily open the doors to Tennessee or assign good and cogent reasons why those doors should remain closed. It is no answer to say the President had no right to organize the State of Tennessee. The President did not organize that State. It was organized by the people; and if it were otherwise, it would not be a matter of the slightest practical consequence, as the people have adopted it and Congress can ratify all, if ratification is necessary, by an admission of her delegation or such of them as can walk up to that stand and subscribe to the oath prescribed by Congress. And the same process can be adopted with other States as fast as they comply with all your tests of loyalty. There must be a distinction made between the loyal and the disloyal in the South, or every friend of the Government in that region will be destroyed. It will not do to complain of a failure of the President to make this distinction, while Congress is guilty of such sweeping injustice.

Neither this Congress nor the President will follow the example of Pierce, who called into his Cabinet the arch traitor Jeff. Davis, and his legion of minions and traitors into almost every place of power and trust in the Government, immediately after their overthrow by the Unionists of the South in the memorable contest of

1851. We have not forgotten how Buchanan, through his infamous Secretary of War, Floyd, armed the disunionists of the South and left these same loyalists of Tennessee and other sections to struggle without hope and without aid against armed traitors, under the treasonable plea that there was no power in this Government to maintain its own existence by force, until almost the entire South were plunged or driven into the most cruel, bloody, and wicked war that history has recorded. Who does not believe, if the power and patronage of the Government during Pierce's Administration had been in the hands of Unionists, and if Buchanan had followed that example and called none but Unionists about him, and armed none but Unionists, and executed the laws as his oath required, but that this war could have been averted? And who does not confidently hope and expect that a Union party can now be built up in the South, ever faithful and true, by commencing with those whose loyalty has been tested by this war, and admitting them to our confidence and thereby establishing a nucleus around which the people of the South can rally? But this never can be done by declaring a want of confidence in the faithful equally with the unfaithful. We have nothing to fear from the people of the South. Uninfluenced by passion and undeceived by demagogues, they will soon learn to love that Union which they had known only as a blessing until justice required that they should be punished for the rebellion into which they were plunged by the most wicked conspiracy that can ever disgrace the history of man.

But the resolution under consideration was born in the excitement of passion created by the veto of the Freedmen's Bureau bill. It was announced that last week there was a disposition to admit Tennessee, but that all was changed, not for anything that Tennessee had done, but because the President had exercised his constitutional power to veto a bill, and this resolution passed the House under the "previous question" without argument or a moment's time for the voice of reason to be heard. Suppose the President had no right to veto the bill, was that a reason why Congress should do wrong, or act rashly and unwisely? I think candid and fair men will say it was no reason, and if this resolution would not have appeared but for that action of the President, it should now be defeated, for that action furnishes no ground for its adoption. But did the President after all commit such an offense against his party or his country as to subject him to condemnation? I voted for and supported the Freedmen's Bureau bill, although conferring, as it did, vast discretionary power upon the President. I did this because I was anxious to do all in my power to protect the freedman, and to afford him a chance to live and labor and enjoy the fruits of his labor, but I did this supposing the President could sign it and carry its provisions into effect. This, upon examination, he found he could not do, and I was unwilling to embarrass the situation of the freed-

men by placing on the statute-book a law which would be a nullity unless it could be executed by the Executive, and it could hardly be supposed that the President could exercise his discretion to carry into effect a law which he himself believed to be unconstitutional and a violation of his oath of office.

Believing that the President had acted honestly, and knowing that the objections which he urged were of grave consideration, and had been so regarded by the friends of the bill, I felt called upon to sustain the veto, believing that more could be done for the freedmen by coöperating with the President who had already done so well and so much for them than by the passage of a bill to which he was so much opposed. I think even now, in view of the construction of the former law by the President, as indicated by the letter of General Howard, that the real friends of the freedman will say I was right. But, independent of the merits of the Freedmen's Bureau bill, I was alarmed for my country at the excitement which prevailed, and particularly from the haste with which this resolution was being pressed in the other House, and felt that neither the Union party nor the country could afford to allow a bill, of whatever character, to be passed over the veto of the President under such extraordinary circumstances. I thought it was time to stop and reflect before we took such action as might forever separate the President and Congress.

I felt that the country called upon us, both President and Congress, to harmonize in the great work before us, not only in protecting the freedmen, but in restoring the Union of these States. He had proven to the world his desire to protect the freedmen by the thorough organization of a bureau under the charge of one of the most able and trusted officers of the United States; and while he was earnestly engaged in the good work I was unwilling to embarrass him by the passage of what he regarded as an unconstitutional law. I believed that he was honestly and faithfully carrying out the principles of the Union party which nominated and elected him, and that his coöperation with the Union men was absolutely necessary to a restoration of the Union; and I was unwilling to weaken his influence or alienate him from the Union majority in Congress by passing a bill over his veto in a moment of excitement or passion. Has Andrew Johnson violated any obligation to the Union party? I have here the Baltimore platform upon which he was nominated:

Resolved, That it is the highest duty of every American citizen to maintain against all their enemies the integrity of the Union and the paramount authority of the Constitution and laws of the United States; and that, laying aside all differences of political opinions, we pledge ourselves as Union men, animated by a common sentiment, and aiming at a common object, to do everything in our power to aid the Government in quelling by force of arms the rebellion now raging against its authority, and in bringing to the punishment due to their crimes the rebels and traitors arrayed against it.

Resolved, That we approve the determination of the Government of the United States not to compromise with rebels, nor to offer any terms of peace ex-

cept such as may be based upon an "unconditional surrender" of their hostility and a return to their just allegiance to the Constitution and laws of the United States, and that we call upon the Government to maintain this position, and to prosecute the war with the utmost possible vigor to the complete suppression of the rebellion, in full reliance upon the self-sacrifice, the patriotism, the heroic valor, and the undying devotion of the American people to the country and its free institutions.

Resolved, That as slavery was the cause, and now constitutes the strength of this rebellion, and as it must be always and everywhere hostile to the principles of republican government, justice and the national safety demand its utter and complete extirpation from the soil of the Republic; and that we uphold and maintain the acts and proclamations by which the Government, in its own defense, has aimed a death blow at this gigantic evil. We are in favor, furthermore, of such an amendment to the Constitution, to be made by the people in conformity with its provisions, as shall terminate and forever prohibit the existence of slavery within the limits of the jurisdiction of the United States.

Resolved, That the thanks of the American people are due to the soldiers and sailors of the Army and Navy, who have periled their lives in defense of their country and in vindication of the honor of the flag; that the nation owes to them some permanent recognition of their patriotism and valor, and ample and permanent provision for those of their survivors who have received disabling and honorable wounds in the service of the country, and that the memories of those who have fallen in its defense shall be held in grateful and everlasting remembrance.

Resolved, That we approve and applaud the practical wisdom, the unselfish patriotism, and unwavering fidelity to the Constitution and the principles of American liberty with which Abraham Lincoln has discharged under circumstances of unparalleled difficulty the great duties and responsibilities of the presidential office; that we approve and indorse, as demanded by the emergency and essential to the preservation of the nation, and as within the Constitution, the measures and acts which he has adopted to defend the nation against its open and secret foes; that we approve especially the proclamation of emancipation, and the employment as Union soldiers of men heretofore held in slavery; and that we have full confidence in his determination to carry these and all other constitutional measures essential to the salvation of the country into full and complete effect.

Resolved, That we deem it essential to the general welfare that harmony should prevail in the national councils, and we regard as worthy of public confidence and official trust those only who cordially indorse the principles proclaimed in these resolutions, and which should characterize the administration of the Government.

Resolved, That the Government owes to all men employed in its armies, without regard to distinction of color, the full protection of the laws of war; and that any violation of these laws or of the usages of civilized nations in the time of war by the rebels now in arms, should be made the subject of full and prompt redress.

Resolved, That the foreign immigration, which in the past has added so much to the wealth and development of the resources and increase of power to this nation, the asylum of the oppressed of all nations, should be fostered and encouraged by a liberal and just policy.

Resolved, That we are in favor of the speedy construction of a railroad to the Pacific.

Resolved, That the national faith, pledged for the redemption of the public debt, must be kept inviolate; and that for this purpose we recommend economy and rigid responsibility in the public expenditures, and a vigorous and just system of taxation; that it is the duty of every loyal State to sustain the credit and promote the use of the national currency.

Resolved, That we approve the position taken by the Government that the people of the United States never regarded with indifference the attempt of any European Power to overthrow by force, or to supplant by fraud, the institutions of any republican Government on the western continent; and that they view with extreme jealousy, as menacing to the peace and independence of this our country, the efforts of any

such Power to obtain new footholds for monarchical Governments, sustained by foreign military force, in near proximity to the United States.

If at the time that platform was adopted we could have had union upon the terms that are now offered—suppose that we could have had union then upon the plan of Lincoln and Johnson: is there any person living in the United States who believes there would have been opposition to it? If we could have foreseen when that platform was adopted that by the month of March, 1866, every southern State would have laid down its arms, that not only the northern States but nearly every one of the southern States would have adopted the constitutional amendment referred to in that platform, and not only adopted it but abolished slavery by their own Legislatures, and would be anxious to be restored to their relations to the Union upon almost any terms that Congress or the President might suggest—if that picture had been presented to us then, would it not have made the hearts of the American people glad? To-day we have that picture before us. We have union within our power upon the principles laid down in that platform carried out to the fullest extent, and the question is, shall we accept it or shall we destroy the Union party by the introduction of new propositions and new theories? I stand by the platform of 1864. I say that the Union men who rallied around the flag under that platform cannot be excommunicated from the party while they stand by that platform. It is the party pledge, and before new party tests are required the people must again assemble and make new party declarations.

Now, I repeat my question, what principle in that platform has the President violated? You say he has usurped power. How? In inviting the loyal men of the South to organize State governments, and fixing conditions. I ask, what condition did he impose that had not been already determined by the war, or what principle did he abandon that had been vindicated by the war? Mr. Lincoln's plan of reconstruction which he followed was made an issue in that canvass and triumphantly sustained by the people. Was it not to be expected that Mr. Johnson when he came into power would follow the indorsed plan and retain in his Cabinet the well-tried constitutional advisers of his predecessor? And for doing this is he to be condemned? Have we a right to force new issues which the people never have and probably never will sustain, and demand their adoption or resolve upon the destruction of the Administration upon which the existence of the party, if not the Union, depends?

One issue which is constantly urged, and which is a disturbing element, is the question of immediate and universal negro suffrage. Many Senators have discussed that proposition. Very few of them say whether they are for or against it, but they are constantly agitating and discussing it. Why do they discuss it if they are not for it? If they are not for it, it has no business in these discussions. But

the committee of fifteen, while not demanding negro suffrage directly, are willing to do it by indirection, or deprive one section of the country of what they admit is just representation; and it has been frequently said that it was the only difficulty in the way of restoration. The New York Tribune, the leading organ of these views, the paper which complains most bitterly of the President, and which is followed by a great portion of the press, says:

"Let it be distinctly understood that, if the whites of the South are not represented in Congress, it is because they deny all right of representation or power of self-protection to the blacks. Show us a single State which admits her blacks to vote on a like intellectual, educational, moral, and pecuniary basis with her whites, and we will urge the instant admission of the chosen Representatives of that State, though they be all ex-rebel generals of the most obnoxious type."

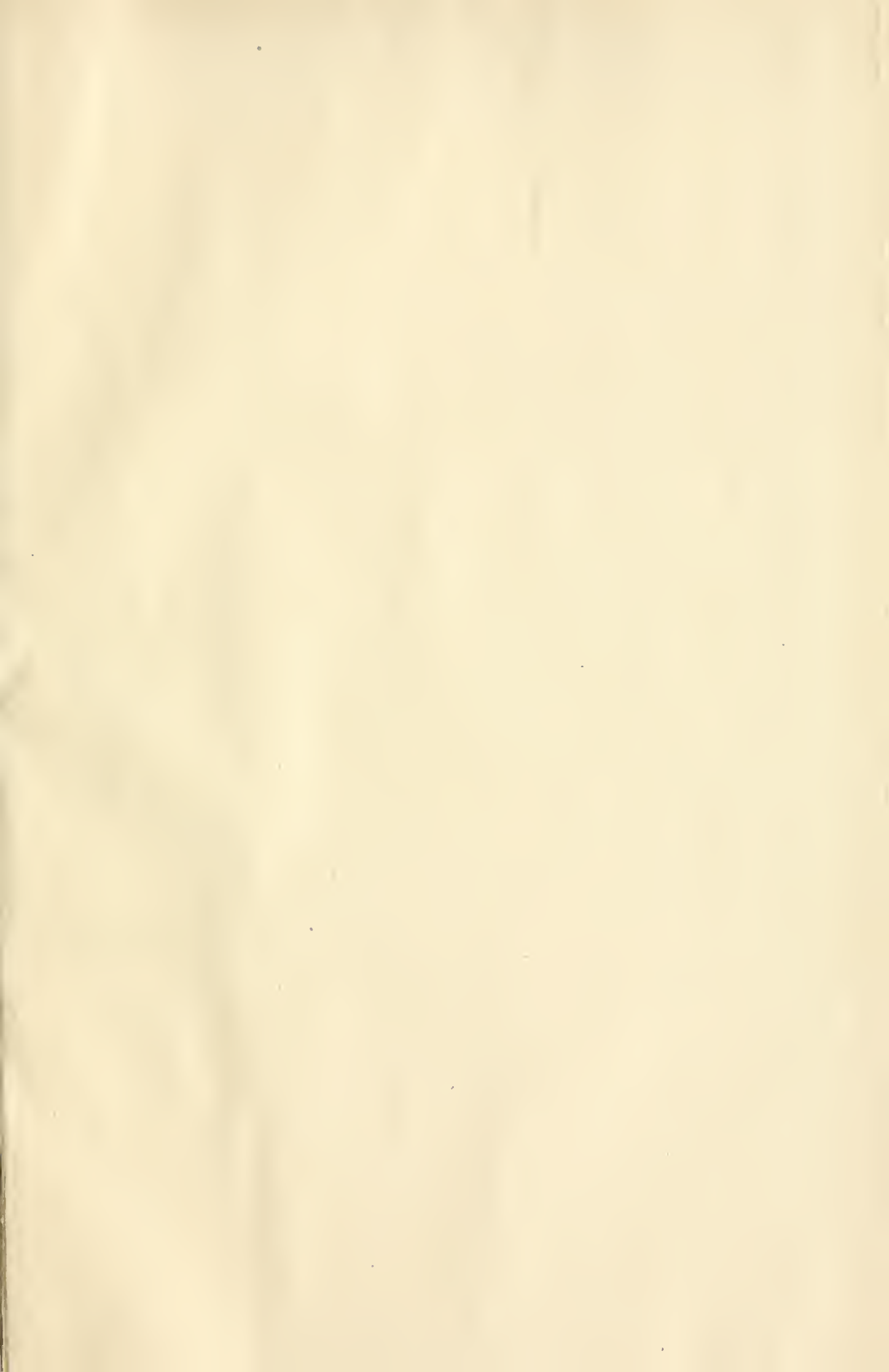
There the New York Tribune, the leading journal advocating these views, says distinctly, let the negroes vote and we will advocate the admission of ex-rebels of the most obnoxious type into the Halls of Congress. If Senators continue to argue the question of negro suffrage without stating whether they are for or against it, the country is bound to infer therefrom that after all that is the issue. If it is not the issue, it should not be discussed here in these troublesome times. If the South is to be kept out until negro suffrage can be accomplished, the quicker the country know it the better. If you discuss that question continually they will believe that it is the only issue, and you will destroy the Union party.

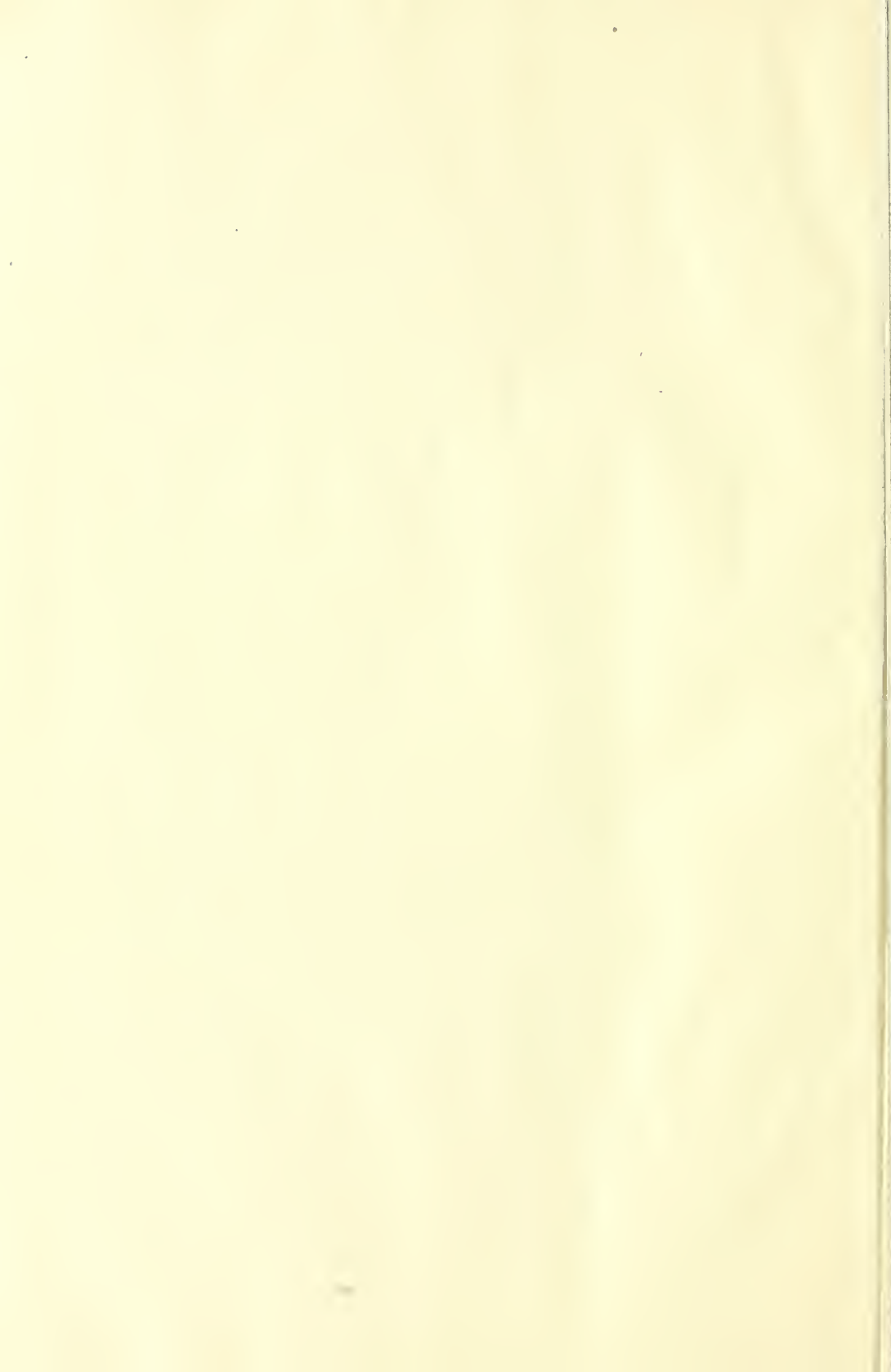
It is sufficient to say in defense of the President for not conferring the right of suffrage upon the negro in the organization of the southern States, that neither the platform of his party, the Congress of the United States, nor the policy of his predecessor, would have warranted him in such action.

But if the question of negro suffrage is not the difficulty, what is the difficulty? Is his plan of restoration so plainly and obviously wrong as has been asserted? If so, it ought not to be a difficult matter to suggest a better one. But has this been done? Has not the matter been agitating the country for near eighteen months, and has any plan been suggested that would be more acceptable to the majority in Congress than that of the President? The committee of fifteen have labored long, and I presume diligently, and have failed to produce a plan which seems likely to meet with the approval even of those who claim to be the greatest friends and champions of the freedmen.

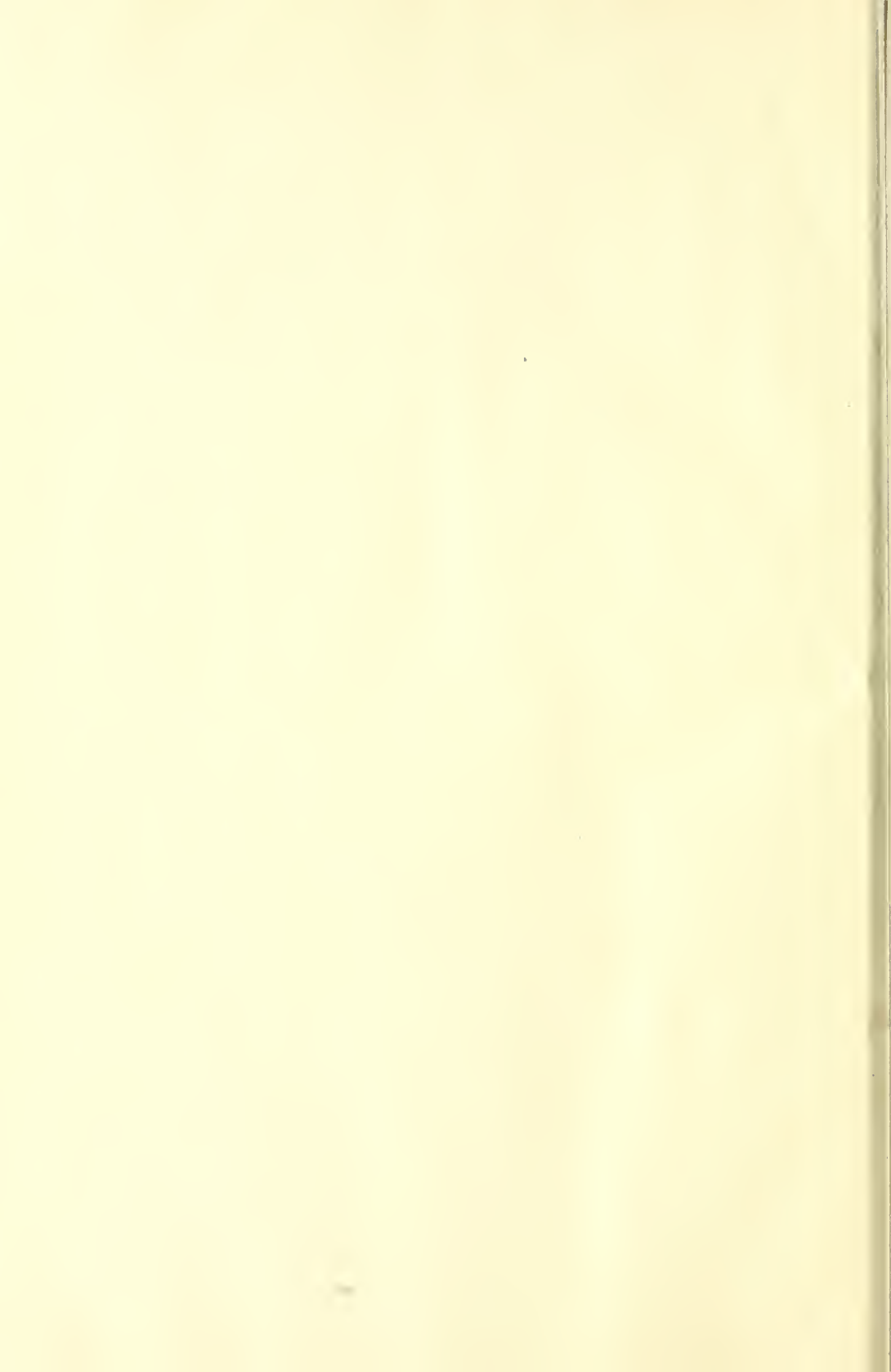
The Senator from Massachusetts himself, who has spent a lifetime in defense of the negro race, is constrained to repudiate the main proposition of the committee. Let me appeal to the Union majority of this House to act promptly and receive at once the loyal Representatives from the South, for if the Union party fails, which it seems likely to do, after all its glorious achievements, it will be overthrown, and the loyal masses of the country will rally around the Executive and enable him to accomplish the great work; for, be assured, the Union will be preserved, and if we prove incompetent, others will take our places. It is said that we must give the committee time to act, but let me tell them, that great emergencies demand immediate action. When the national finances are depressed with uncertainty; when the nation is groaning under three thousand millions of debt; while every house in all this broad land is in mourning for the sacrifices made for the Union of these States; when the only hope of thirty million people is centered in restoration and peace, delays for matter of form cannot long be endured.

If the committee would free itself from the growing apprehension that its counsels are controlled by the well-known and destructive—permit me to say—sentiments of THADDEUS STEVENS, of Pennsylvania, they must present at once some feasible plan by which harmony can be restored; and until such a plan is presented, the Lincoln-Johnson plan will remain the only way to peace and Union known to the American people. I appeal to the loyal majority of this House to sink all minor differences and secure the Union of these States, with slavery, the parent of secession, abolished, with the dignity and honor of the nation preserved and vindicated, with the free Constitution of the fathers intact, before discord and confusion shall have again drenched this land with fraternal blood. We are called upon by all that we hold most sacred and dear to secure at once the fruits of victory, to risk nothing to chance or anarchy; and if we cannot obtain all we would, let us obtain what we can. If we preserve what we now have, an all-wise Providence, in his own good time, will grant us still greater blessings and greater advancement in the work of regeneration and reform; but if anarchy and discord are allowed by us to obscure the bright sunshine of peace which is lighting the way and cheering the hearts of the benevolent and true, a fearful responsibility awaits us.

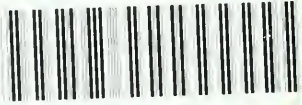








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